

HB 500 - House Business & Labor
February 20, 2015

The 2011 legislative session passed legislation substantially revising Montana's Workers Compensation system. HB 334. Part of the change enacted was allowing an insurer the right to choose an injured worker's treating physician. This was done in order to save money.

It is now 4 years since passage of the law rewriting this part of the worker's compensation statutes. HB 334. Where is the data supporting the cost savings?

The National Council on Compensation Insurance (NCCI) was asked to provide analysis of the costs of rescinding this part of the law. They were unable to state a conclusion. Here is what they wrote:

NCCI estimates that the proposed changes to the choice of treating physician provisions may have an upward impact on workers compensation system costs in Montana. The magnitude of such an increase, however, is uncertain. (NCCI memo dated 7/30/14).

They went on to comment that the impact could have:

Minimal cost impact since only a relatively small number of claims may be affected. (NCCI memo dated 7/30/14).

There is no dispute that this change in law is rarely used.

In testimony before the Economic Affairs Interim Committee on May 13, 2014, the State Fund's Medical Director, Bridgett McGregor testified that from a total of 18,759 claims that 2,742 claims had a designated treating physician and only 223 were assigned a physician other than the injured workers' initial treating physician. And of that number nearly all were by agreement between the claimant and the insurer. (Designated Treating Physician Provisions – HB 334, presented to Economic Affairs Interim Committee, May 13, 2014).

The Montana Self Insurers' Association presented a memorandum to the Economic Affairs Interim Committee dated May 1, 2014 captioned "Use of Provision of Insurer to Change Treating Physician for an Injured Worker." In that writing they informed the Committee that after undertaking a survey they were able to determine that action to change the treating physician was utilized less than 30 times out of the approximately 15,000 claims that had been made since July 1, 2011. Most were with agreement between the claimant and the insurers.

The question plainly stated is: Where are the savings? What are the savings? How do we know that these savings are attributable to physician choice being taken from the worker and given to an insurer? Where is the data?

There are many reasons to allow a patient the freedom to choose his or her treating physician. An injured worker may feel more comfortable and have greater trust in his or her treating physician. The physician's location may be more convenient. And most significantly, the treatment and treatment outcomes may be better.

There is no demonstrable reason to justify the current law. It is rarely used and then the physician changes are with a claimant's agreement.

Please restore an injured worker's right to choose his or her own treating physician, by supporting HB 500.

Lonnie Olson
Montana Trial Lawyer's Association
(406) 443-3124



Preliminary Cost Impact Analysis

Montana Treating Physician Proposal As Requested on 06/19/2014

NCCI has completed a preliminary cost impact analysis for a Montana proposal involving the choice of treating physician.

The analysis below is considered preliminary. NCCI may supplement this document with a complete and final analysis of the proposal at a later date. It is possible that the estimated impact of the final analysis will differ materially from what is provided in this document. Note that the absence of an update to the preliminary analysis does not signify that this is NCCI's final assessment of the cost impact of this proposal.

Preliminary Cost/Directional Impact(s)

NCCI estimates that the proposed changes to the choice of treating physician provisions may have an upward impact on workers compensation system costs in Montana. The magnitude of such an increase, however, is uncertain.

Background and Summary

Currently in Montana, the employee selects a medical provider as defined in §39-71-116(41) for initial treatment. After accepting liability for the claim, the insurer may designate (for any reason) a treating physician who agrees to assume the responsibilities of a treating physician per §39-71-1101(2).

The current provisions regarding choice of treating physician have been in place since the enactment of HB 334 in 2011. NCCI estimated the choice of treating physician provisions in HB 334 to have a -8.5% impact on overall system costs in Montana, effective 7/1/2011. That cost impact analysis was based on research published by the Workers Compensation Research Institute (WCRI)¹. At the time HB 334 was enacted, the Montana system was neither a 'pure employee' nor 'pure employer' choice of physician system. For derivation of the filed impacts, NCCI modified the published WCRI results based on judgment and feedback from system stakeholders related to the Montana workers compensation system (as compared with the state-specific characteristics of those states included in the WCRI study).

This proposal would appear to continue to allow the employer to select the treating physician, but only under certain circumstances. Under the proposal, (after the employee first selects their healthcare provider for initial treatment), the employer/carrier may then designate a treating physician (only) under the following circumstances:

- *The treating physician chosen by the worker fails to comply with their responsibilities as 'treating physician' under §39-71-1101(2), or*

¹ *The Impact of Provider Choice on Workers' Compensation Costs and Outcomes, WCRI (2005), Victor et. al.*



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- The treating physician choice of the worker failed to give due consideration for the type of injury or occupational disease suffered, or
- The treating physician may be changed at any time with the consent of both the worker and insurer.

NCCI Commentary

If the proposed changes to the choice of physician provisions were enacted, the impact on the Montana system could range from:

- Complete reversal of the choice of treating physician cost impacts contained in HB 334 due to the proposed restrictions on changing the treating physician, to
- Minimal cost impact since only a relatively small number of claims may be affected.

Compared to the current situation in Montana, the difference in the number of claims (and associated cost) that would result in a change in treating physician if this proposal were enacted is difficult to discern. If enacted, the cost impact of this proposal would be affected by the behavior of various stakeholders since it would (at least) depend on:

- Injured workers' decisions to use their own healthcare provider, or to consent to a change in treating physician, or to dispute an attempted change in treating physician,
- Carriers' and employers' decisions to change the treating physician, or to dispute a refusal of their attempted change in treating physician,
- The ability to prove that a change in treating physician was appropriate and in accordance with the law,
- Treating physicians' compliance with their responsibilities under §39-71-1101(2), and
- Hearing officers' and judges' decisions on changes in treating physicians (in cases where a change in treating physician is disputed).

Data on claims impacted solely by the choice of physician provision contained in HB 334 reform is not available to NCCI.

The cost impact from this proposal is influenced by stakeholders' behavior, and NCCI does not have sufficient relevant data or information at this time to estimate the cost impact of this proposal. Although there may be upward pressure on workers compensation system costs in Montana if this proposal were enacted, the cost impact is uncertain. Any cost impacts related to this change, if enacted, would be realized in subsequent claims experience and reflected in future loss cost filings in Montana.



Preliminary Cost Impact Analysis

Montana Treating Physician Proposal As Requested on 06/19/2014

Other Issues

- *If this proposal were enacted, a carrier's request for a change in treating physician could be disputed, which may increase loss adjustment expenses and frictional costs.*
- *Since no specific effective date was stated for this proposal, this change may be applied retroactively. The benefit provisions at the time the premiums were calculated for policies written prior to the effective date of the proposed change may be different than the benefit provisions under this proposal. To the extent that the provisions of this proposal result in higher system costs, such costs were not contemplated in premiums determined for such prior policies, and thus may generate an unfunded liability for the workers compensation system.*



Designated Treating Physician Provisions – HB 334

With the implementation of HB 334 insurers were afforded the ability to designate a treating physician in an effort to better manage medical costs associated with workers' compensation claims. Montana State Fund believes this is a good start to getting injured workers the right care at the right time to facilitate appropriate and timely return to work. We acknowledge any treating physician designation should be both thoughtful and judicious.

We know there is a limited volume of specialists in Montana, and too frequently, an even more limited provider population willing to care for injured workers. To maximize injured worker medical care outcomes Montana State Fund identified a need to develop administrative relationships with Montana's medical communities. This led to the hiring a Provider Relations Specialist and four schedulers. The schedulers are responsible for scheduling medical appointments at the direction of the claims examiner or medical case manager, and obtaining medical documentation from treatment visits. As a result of these efforts, injured workers are receiving timely care with appropriate specialists, and claims examiners are getting the necessary documentation to manage workers' compensation claims.

As of March 31, 2014, Montana State Fund has managed a total of 18,759 claims for accident years 2011-2014. 85% of these claims never had a designated treating physician assigned as the injuries have either resolved or are resolving without this intervention. 2,742 claims were assigned a designated treating physician, and of this number only 223 (1%) were assigned a physician other than the injured workers' initial treating physicians. These 223 claims were reassigned as follows:

- 104 to a specialist;
- 101 to an ongoing care provider; and
- 18 to another similar specialist.

For the 18 claims that were reassigned to another similar specialist, 12 were at the request of the injured worker, 5 were at the request of the current treating physician, and 1 was due to the relocation of the original treating physician.

Prior to HB 334, Montana State Fund was able to designate a treating physician through our relationship with a Managed Care Organization. Our preliminary review of this designation data reflects similar results to those stated under HB 334.

Montana State Fund recognizes there are occasions an injured worker may object to an insurer's designation of a different treating physician. An injured worker may mediate a dispute over benefits which may include the assignment of a designated treating physician.

Montana State Fund believes designation of a treating physician is making a positive difference in getting injured workers timely and appropriate care and we support continuing the statute as passed in HB 334 in 2011.

MONTANA SELF INSURERS' ASSOCIATION

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MEMORANDUM

TO: Economic Affairs Interim Committee

FROM: Bob Worthington, Montana Self-Insurers Association

DATE: May 1, 2014

RE: Use of Provision of Insurer to Change Treating Physician for an Injured Worker

HJR 25, passed by the 2013 Montana Legislature, directed the Economic Affairs Interim Committee (EAIC) to study a number of matters, including some addressing the administration of Montana's workers' compensation laws. The study directive included an analysis of the Sec. 39-71-1101, MCA that allows an insurer to seek a change in the treating physician of an injured worker. A discussion of this subject was held at the March 27, 2014 meeting of the EAIC. At the conclusion of that discussion a request was made that insurers provide the Committee with an estimate of the usage of this provision since its passage in 2011. The following is a response to that request on behalf of Plan 1 Self-Insured Employers in Montana. The Montana Self Insurers' Association represents self-insured employers throughout Montana. The membership includes single employers and group self-insured programs.

Coverage is provided to more than 95,000 employees across the work spectrum and includes employees of private and public operations. Adjustment of claims for injured workers are handled in-house by some self-insured entities and by third party administrators for others.

In response to the inquiry about the use of the change in treating physician provision (Sec. 39-71-1101) it is noted that none of the membership collects data that singles out or identifies this action. Therefore, all analysis of use of this provision was done by a query of examiners who service the claims. With the void of empirical data the numbers derived for this analysis were the result of the recollections of examiners and their anecdotal comments. The survey for this date included all members with large employee bases. For the lack of time it did not include all MSIA members. The inquiry to members asked for data on claims incurred since the implementation of the provision July 1, 2011.

The survey determined that action to change treating physician was utilized by members surveyed a total of less than 30 times. During the period involved members surveyed had incurred approximately 15,000 claims. This results in a utilization of the provision in less than .02% of the claims incurred by member workers. The data highlights the fact the provision is used very sparingly by Plan 1 insurers. When asked why the change in physician was made, in the vast majority of the instances the change was made to obtain medical treatment specifically directed to the needs of the injured worker. An example of this type of action would involve a claim where the worker's injuries changed or matured to a point where more specialized

treatment was appropriate. In a majority of instances discussed the change was made in consultation with the injured worker and with their mutual consent to the change.

The analysis revealed one instance where a change in treating provider was made because of challenges with a specific provider. With claims dealing with several injured workers treated by the same provider, the provider would not produce appropriate medical notes and produced no evidence of medical improvement in any of the cases, even after repeated requests. The treating provider was changed to obtain prompt and appropriate treatment for the injured workers.

The analysis of the use of the provision allowing an insurer to change the treating physician suggests its usage is providing results as intended in the passage of the legislation. Testimony on this provision of HB 334 stated its implementation would provide prompt and better directed treatment for the injured worker. The exact result of this analysis.

The ability of an insurer to change the treating physician is a useful and productive tool in the management of workers compensation claims and the desire to provide prompt, effective treatment to the injured worker. While used very sparingly, the intended outcome is being achieved.

The Montana Self Insurers Association utilizes this provision where appropriate and supports its retention in law. We would strongly oppose any attempt to alter or remove this provision.